

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1275 of 2024**

Arising Out of PS. Case No.-178 Year-2020 Thana- GURUA District- Gaya

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Munni Devi Wife of Sarjun Chaudhary Resident of Village - Auradih, P.S. -
Gurua, District - Gaya

... .. Appellant/s

Versus

1. The State of Bihar through the District Magistrate, Gaya, District - Gaya Bihar
2. Akhilesh Chaudhary Son of Arjun Chaudhary Resident of Village - Auradih, P.S. - Gurua, District - Gaya
3. Arjun Chaudhary Son of Late Tilak Chaudhary Resident of Village - Auradih, P.S. - Gurua, District - Gaya
4. Pratima Kumari Daughter of Arjun Chaudhary Resident of Village - Auradih, P.S. - Gurua, District - Gaya

... .. Respondent/s

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Appearance :

For the Appellant : Mr. Mahendra Thakur, Advocate
Mr. Vijay Kumar, Advocate
For the State : Mr. Satya Narayan Prasad, APP

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**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

Date : 17-06-2025

The present appeal has been filed by the appellant/original informant under Section 372 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') against the judgment of acquittal dated 09.09.2024 rendered by the learned Additional District & Sessions Judge-I, Sherghati, Gaya in Sessions Trial No.138/2022/950/2023, arising out of Gurua P.S. Case No.178/2020, whereby the respondents-accused



have been acquitted by the learned Trial Court.

2. Heard Mr. Mahendra Thakur, learned Advocate for the appellant-informant and Mr. Satya Narayan Prasad, learned APP for the Respondent-State.

3. Mr. Mahendra Thakur, learned Advocate for the appellant-informant would mainly submit that the FIR being Gurua P.S. Case No.178/2020 was registered under Sections 341/323/302/504/34 of the Indian Penal Code as well as under Sections 3/4 of the Prevention of Witch Practices Act against the present respondents-accused. It has been mainly alleged by the informant in the FIR that on 03.08.2020, at about 04:15 p.m., her daughter Nirmala Kumar was returning from a Devi temple after offering her prayer. Pratima Kumari of her village started abusing her daughter. When her daughter forbade Pratima Kumari to do so, she caught hold of her hair and pulled her down. Till then, Arjun Choudhary, Akhilesh Choudhary and Phulesh Devi came and started assaulting her daughter. When the informant and her husband came there after hearing the alarm, Phulesh Devi caught her, pulled her down and started assaulting her on her breast by leg and assaulted her on her ear by means of iron rod due to which the ear of the informant was torn and started bleeding. Arjun Choudhary and his son



Akhilesh Choudhary assaulted her husband on his head by means of iron rod due to which her husband fell down there and started vomiting blood and became unconscious. Thereafter the accused persons fled away from there. The local people gathered there after hearing alarm and brought her husband to Gaya Hospital from where he was referred to Blue Diamond Hospital, Patna where her husband died during the course of treatment.

4. Learned Advocate for the appellant-informant thereafter submits that after registration of the FIR, the Investigating Officer carried out the investigation and during the course of investigation, he had recorded statements of witnesses and collected the relevant evidence and thereafter filed charge-sheet against the respondents-accused. As the case was exclusively triable by the Court of Sessions, the concerned Magistrate committed the same to the concerned Sessions Court.

5. Mr. Thakur, further submits that before the Trial Court, the prosecution had examined eight witnesses and also produced documentary evidence. Further statement of the accused-persons came to be recorded under Section 313 of the Code. After conclusion of the trial, the Trial Court passed the



impugned judgment of acquittal whereby all the respondents-accused have been acquitted. The appellant-informant has, therefore, preferred the present appeal.

6. Learned Advocate for the appellant-informant has mainly contended that there are two injured eye-witnesses to the incident in question and they have fully supported the case of the prosecution. It is further submitted that the doctor, PW-8, who had conducted the *post mortem* on the dead body of the deceased, has also supported the version given by the eye-witnesses. Thus, prosecution has proved the case against the accused beyond reasonable doubt, despite which the Trial Court has passed the impugned judgment of acquittal and, therefore, the same is required to be quashed and set aside.

7. Learned Advocate for the appellant-informant further submits that the Trial Court has mainly placed reliance upon the deposition given by PW-3, mother of the deceased, who did not support the case of the prosecution because of the threats given by the accused. Learned counsel, therefore, urged that the Trial Court has committed grave error while passing the impugned judgment of acquittal. He, therefore, urged that the present appeal be admitted and thereafter the impugned judgment be set aside and thereby the respondents-accused be



convicted.

8. On the other hand, learned APP has fairly submitted that the Trial Court has not committed any error while passing the impugned judgment of acquittal and, therefore, in the present acquittal appeal filed by the informant, no interference is required. It is also submitted that State has not preferred any appeal against the impugned judgment of acquittal.

9. We have considered the submissions canvassed by learned Advocates appearing for the appellant and the Respondent-State. At the outset, it is required to be observed that pursuant to the order dated 18.11.2024 passed by this Court, learned counsel for the appellant has supplied the copy of the deposition of the witnesses and the other documentary evidence upon which he has placed reliance. We have gone through the deposition of the prosecution witnesses and the evidence led by the prosecution.

10. From the material placed before us, it would reveal that *fardbeyan* of Munni Devi, PW-2, who is wife of the deceased, came to be recorded by S.I. Akhileshwar Mishra of Agamkuan P.S., District Patna on 05.08.2020, at about 14:10 p.m. in Blue Diamond Hospital, Patna. From the *fardbeyan*



given by the informant, it transpires that the incident took place on 03.08.2020, at about 04:15 p.m. for which *fardebayan* was given by the informant on 05.08.2020. It would further reveal from the record that after recording the *fardebayan* of the informant, the concerned police officer sent the same to Gurua Police Station. The said *fardebayan* was recorded as formal FIR on 12.08.2020, at 11:00 a.m. Thus, from the aforesaid events, it is revealed that there is delay in lodging the FIR and there is delay in lodging the formal FIR. No explanation has been rendered by the prosecution with regard to the same.

11. PW-1, Nirmala Kumari, who is daughter of the informant as well as the deceased, has mainly deposed in her examination-in-chief that the incident took place on 03.08.2020, at 04:00 p.m. She was returning from a temple after offering her prayer. Pratima Kumari was standing on the way and telling that her mother is a *dain* (witch) and she obstructs fixing of her marriage. When PW-1 forbade her to do so, she caught hold of her hair. When her mother and father came, Phulesh Devi pulled her mother down, sat on her breast and started assaulting. Phulesh Devi assaulted her mother by means of a rod on her ear due to which blood started oozing out and her mother became unconscious. Arjun Choudhary and Akhilesh Choudhary



assaulted her father by means of rod in the back portion of his head due to which her father sustained injury and fell down. When the accused persons saw that her father has died, they fled away. Her father was brought to Sherghati for treatment from where he was firstly referred to Gaya and from there he was referred to Patna. Her father was treated in Blue Diamond Hospital for two days and thereafter her father died. The said witness identifies Pratima Kumari, Arjun Choudhary and Akhilesh Choudhary in Court.

11.1. The said witness has stated in her cross-examination that she did not lose consciousness due to the assault. When she was being assaulted, the people of the village were present there. Sudama Choudhary, Pradeep Choudhary and Vinod Yadav were present there. They did not stop the quarrel. Pratima Kumari caught hold of her hair and she did not fall on the ground. She got injuries on her temple and back. The said witness has denied the suggestion that she implicated Arjun Choudhary and Akhilesh Choudhary in a false case to grab their lands and that no such occurrence took place and she gave false testimony.

12. PW-2, Munni Devi is the informant of the case and she has deposed in her examination-in-chief that the



occurrence took place on 03.08.2020, at 04:00 p.m. Her daughter was returning from a temple after offering prayer. Pratima Devi was abusing her daughter and told that her mother is a *dain* (witch) and she obstructed her marriage. When her daughter forbade Pratima Devi to do so, she caught hold of her hair and pulled her down. Thereafter she and her husband went there after hearing alarm. In the meantime, Akhilesh Choudhary, Arjun Choudhary and Phulesh Devi reached there. When she forbade them to quarrel, Phulesh Devi sat on her breast and assaulted her with a rod on her ear due to which she sustained injury in her ear and blood started oozing out. Arjun Choudhary and Akhilesh Choudhary assaulted her husband by means of rod on his head due to which her husband sustained injury and fell down on the ground. Thereafter, the accused persons fled away. Her husband was brought firstly to Sherghati for treatment from where he was referred to Gaya and after that referred to Patna. Her husband was treated in Blue Diamond Hospital, Patna and after two days her husband died. She gave her statement before the police in Patna. She identifies accused Pratima Devi, Akhilesh Choudhary and Arjun Choudhary in court.

12.1. The said witness has stated in her cross-examination that Phuleshwari Devi pulled her down after



catching hold of her hair and sat on her breast. She did not sustain any injury in her breast, rather she sustained injury in her ear. Her husband was in the business of selling toddy. Her husband was lying near the place where she was thrown. She was also treated in Sherghati with her husband. At the time of quarrel, Sudam Choudhary, Mahendra Choudhary, Tetri Devi, Chanarik Choudhary etc. came there within 2-5 minutes. There was dispute with the family of the accused since 2-3 years before the occurrence. She did not complain earlier either before the police or before the Panchayat regarding her being called a *dain* (witch). It is further stated by this witness in her cross-examination that she reached Sherghati Hospital at 05:00-06:00 hours. She was treated in Sherghati. She went to Dr. Amresh Khan in Sherghati. Her husband was examined by a doctor. She cannot say who treated her husband in Blue Diamond Hospital. The said witness has denied the suggestion that no such occurrence took place and that hot talk was going on between her and her husband and her husband fell down on the ground and sustained injury. She has also denied the suggestion that a false case was lodged against the accused to grab their lands.

13. PW-3, Tetri Devi has deposed in her examination-in-chief that Sarjun Choudhary was her son who



was murdered three years ago. Her son fell after consuming liquor and due to fall he died. The accused persons did not kill her son. Accused Akhilesh Choudhary and Pratima Kumari are her grandson and granddaughter. The police had recorded her statement. She gave the same statement before the police.

13.1. The said witness has stated in her cross-examination that Sarjun fell in a drunken state and died.

14. The depositions of PW-4, PW-5 and PW-6 need not be gone into in detail as they are not the eye-witnesses of the occurrence.

15. PW-7, Diwakar Kumar Vishwakarma is the Investigating Officer who has carried out the investigation. From his deposition, it transpires that on 12.08.2020, he was posted as S.H.O. at Gurua police station. He received the *fardbeyan* given by Munni Devi (informant). The said *fardbeyan* was received from Patna on the basis of which he registered the formal FIR. It has been stated by the said witness that he went to the place of occurrence after registration of the formal FIR and thereafter recorded the statement of the witnesses and filed the charge-sheet against the concerned accused persons. However, during cross-examination, the said witness has specifically admitted that the *fardbeyan* was



recorded on 05.08.2020 which he received on 12.08.2020. During the period between 03.08.2020 to 12.08.2020, he did not receive any written information with regard to the incident which took place nor he received any oral and telephonic information with regard to the same. He has further admitted that he did not recover or discover the rod which was alleged to have been used in committing the crime. He did not find any blood at the place of occurrence. It is further stated by this witness in his cross-examination that Nirmala Kumari told him that she was returning after offering her prayer and her aunt and cousin sister started abusing her. There is no mention regarding the fact that the incident took place at 04:00 p.m. Nirmala and her mother were not treated. He did not mention this fact.

16. PW-8, Dr. Radha Raman Singh is the doctor who has deposed in his examination-in-chief that on 05.08.2020, he was posted as Associate Professor at NMC Patna and on the same day he conducted *post mortem* examination on the dead body of the deceased and found the following:

“2. On observation:- Rigor mortis present all over, Eyes congested, Built-Average.

3. External Examination:-

1. Swelling on right temporal region of size 8cms x



5cms.

4. Internal Examination:-

1. Haemetoma was found on whole of scalp with bruise of muscles of perieto temporal region in both sides. Linear fracture was found on both sides of perito temporal region at different level. These fractures were transversely situated. Intra cranial hemorrhage was found.

2. All viscera were congested, right chambers of heart were full. Stomach content was about 100ml blackish digested food stuffs, bladder was empty and trachea was congested.

3. Opinion

1. All injuries were antemortem in nature.

2. Weapon used- Hard blunt object.

3. Cause of death:- Head injury.

4. Time since death:- 02 hours to 12 hours.”

16.1. The said witness has stated in his cross-examination that rigor mortis was in the first stage. Rigor mortis starts generally one to two hours after death. It is generally found upto 36 hours of death. Stage of rigor mortis is not mentioned in *post mortem* report. The length of injury is mentioned in *post mortem* report. Colour of external injuries



were not mentioned in *post mortem* report. In stomach digested food was found. So it cannot be said about type of the food taken by the deceased. No any foreign object was found in any injury either in internal or external. He has not mentioned it in his report. He has not found any sign of treatment.

17. From the aforesaid deposition given by the prosecution witnesses, it transpires that the prosecution has projected PW-1 and PW-2 as eye-witnesses. As per their deposition, both the aforesaid witnesses sustained injuries in the incident in question. However, it is relevant to observe that the injury certificates of the said witnesses have not been produced before the court. The prosecution has even failed to examine the doctor who had given the treatment to PW-1 and PW-2. It further transpires from the record that as per the case of PW-2, the informant, the incident took place at 04:15 p.m. on 03.08.2020. However, though the informant as well as PW-1 were present with the deceased initially in the government hospital and thereafter in the private hospital, information has not been given to the police with regard to the incident in question and only after the death of the deceased on 05.08.2020, *fardebayan* of the informant came to be recorded. Thus, there is a gross delay in lodging the FIR for which no plausible



explanation has been given by the informant. It is also clear from the record that though *fardebayan* of the informant was recorded by S.I. Akhileshwar Mishra of Agamkuan police station on 05.08.2020, the said police officer has not been examined by the prosecution. Further, the *fardebayan* of the informant was sent by the said officer on 05.08.2020, the same has been received by Gurua police station on 12.08.2020. Thus, formal FIR at Gurua police station was recorded on 12.08.2020. Thus, there are serious lapses on the part of the concerned police authorities.

18. It is also revealed from the deposition given by PW-7, the Investigating Officer, that he has commenced the investigation only after registration of the formal FIR, i.e., on 12.08.2020. He has specifically admitted that rod was not recovered or discovered. He did not find any blood at the place of occurrence.

19. It is important to observe at this stage that PW-3, who is mother of the deceased, has specifically stated in her examination-in-chief that her son consumed liquor and thereafter fell down, as a result of which he died. The accused have not killed her son. It is important to observe that the said witness is not declared hostile and, therefore, the deposition



given by the said witness is required to be considered as it is.

20. It is pertinent to note that we are dealing with the acquittal appeal filed by the informant. The Hon'ble Supreme Court, in the case of **Chandrappa and Ors. Vs. State of Karnataka**, reported in **(2007) 4 SCC 415**, has observed in paragraph no. 42 as under:-

“42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions',



'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal



recorded by the trial court.”

21. Recently, the Hon'ble Supreme Court, in the case of **Nikhil Chandra Mondal Vs. State of West Bengal**, reported in **(2023) 6 SCC 605**, has observed in paragraph no. 22 as under:-

“22. Recently, a three-Judges Bench of this Court in the case of Rajesh Prasad v. State of Bihar has considered various earlier judgments on the scope of interference in a case of acquittal. It held that there is double presumption in favour of the accused. Firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the court. It has been further held that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the



trial court.”

22. From the aforesaid decisions rendered by the Hon'ble Supreme Court, it can be said that there is double presumption in favour of the accused, when the order of acquittal has been accorded by the Trial Court: Firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law; Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the court. Further, if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial court.”

23. Keeping in view the aforesaid decisions rendered by the Hon'ble Supreme Court, if the facts of the present case, as discussed herein-above, are carefully examined, we are of the view that while passing the impugned order of acquittal, the learned Trial Court has not committed any error, as the prosecution has failed to prove the case against respondent/accused beyond reasonable doubt.

24. In view of the aforesaid discussions, we are not



inclined to entertain the present appeal. Accordingly, this appeal
is dismissed.

(Vipul M. Pancholi, J.)

(Sunil Dutta Mishra, J.)

Sanjay/-

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